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103D CONGRESS
1ST SESSION

H. R. 1625

To improve access to fair compensation for those injured while receiving medical care and to increase availability of health care services by reducing the costs of both medical malpractice liability premiums and defensive medicine.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1993

Mrs. JOHNSON of Connecticut (for herself, Mr. ARCHER, and Mr. GINGRICH) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Ways and Means, and Energy and Commerce

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A BILL

To improve access to fair compensation for those injured while receiving medical care and to increase availability of health care services by reducing the costs of both medical malpractice liability premiums and defensive medicine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the ''Medical Malpractice Liability Reform Act of 1993''.

PART 1—GENERAL PROVISIONS

SEC. 101. FEDERAL REFORM OF MEDICAL MALPRACTICE LIABILITY ACTIONS.

(a) CONGRESSIONAL FINDINGS.—

(1) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the medical malpractice litigation systems existing throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for malpractice insurance purchased by health care providers.

(2) EFFECT ON FEDERAL SPENDING.—Congress finds that the medical malpractice litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent by their employers to provide them with health insurance benefits;

(C) the large number of health care providers and health care professionals who provide items or services for which the Federal Government makes payments; and

(D) the large number of such providers and professionals who have received direct or indirect financial assistance from the Federal Government because of their status as such professionals or providers.

(b) APPLICABILITY.—This subtitle shall apply with respect to any medical malpractice liability claim and to any medical malpractice liability action brought in any State or Federal court, except that this subtitle shall not apply to—

(1) a claim or action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action; or

(2) a claim or action in which the plaintiff's sole allegation is an allegation of an injury arising from the use of a medical product.

(c) PREEMPTION OF STATE LAW.—Subject to section 121, this subtitle supersedes State law only to the extent that State law differs from any provision of law established by or under this subtitle. Any issue that is not gov-

erned by any provision of law established by or under this subtitle shall be governed by otherwise applicable State or Federal law.

(d) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this subtitle shall be construed to establish any jurisdiction in the district courts of the United States over medical malpractice liability actions on the basis of sections 1331 or 1337 of title 28, United States Code.

SEC. 102. DEFINITIONS.

As used in this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system established by a State that provides for the resolution of medical malpractice liability claims in a manner other than through medical malpractice liability actions.

(2) CLAIMANT.—The term ''claimant'' means any person who alleges a medical malpractice liability claim, or, in the case of an individual who is deceased, incompetent, or a minor, the person on whose behalf such a claim is alleged.

(3) ECONOMIC DAMAGES.—The term ''economic damages'' means damages paid to compensate an individual for losses for hospital and other medical ex-

penses, lost wages, lost employment, and other pecuniary losses.

(4) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means any individual who provides health care services in a State and who is required by State law or regulation to be licensed or certified by the State to provide such services in the State.

(5) HEALTH CARE PROVIDER.—The term ''health care provider'' means any organization or institution that is engaged in the delivery of health care services in a State and that is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State.

(6) INJURY.—The term ''injury'' means any illness, disease, or other harm that is the subject of a medical malpractice liability action or claim.

(7) MEDICAL MALPRACTICE LIABILITY ACTION.—The term ''medical malpractice liability action'' means a civil action (other than an action in which the plaintiff's sole allegation is an allegation of an intentional tort) brought in a State or Federal court against a health care provider or health care professional (regardless of the theory of liability on

which the action is based) in which the plaintiff alleges a medical malpractice liability claim.

(8) MEDICAL MALPRACTICE LIABILITY CLAIM.—The term ''medical malpractice liability claim'' means a claim in which the claimant alleges that injury was caused by the provision of (or the failure to provide) health care services.

(9) MEDICAL PRODUCT.—The term ''medical product'' means a device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) or a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act).

(10) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages paid to compensate an individual for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary losses, but does not include punitive damages.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(12) STATE.—The term ''State'' means each of the several States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

SEC. 103. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) and sections 119, 142, and 143, this subtitle shall apply with respect to claims accruing or actions brought on or after the expiration of the 3-year period that begins on the date of the enactment of this Act.

(b) EXCEPTION FOR STATES REQUESTING EARLIER IMPLEMENTATION OF REFORMS.—

(1) APPLICATION.—A State may submit an application to the Secretary requesting the early implementation of this subtitle with respect to claims or actions brought in the State.

(2) DECISION BY SECRETARY.—The Secretary shall issue a response to a State's application under paragraph (1) not later than 90 days after receiving the application. If the Secretary determines that the State meets the requirements of this subtitle at the time of submitting its application, the Secretary shall approve the State's application, and this subtitle shall apply with respect to actions brought in the State on or after the expiration of the 90-day period that begins on the date the Secretary issues the response. If the Secretary denies the State's ap-

plication, the Secretary shall provide the State with a written explanation of the grounds for the decision.

PART 2—UNIFORM STANDARDS FOR MEDICAL MALPRACTICE LIABILITY ACTIONS

SEC. 111. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—No medical malpractice liability claim may be brought after the expiration of the 2-year period that begins on the date the alleged injury that is the subject of the action should reasonably have been discovered, but in no event after the expiration of the 4-year period that begins on the date the alleged injury occurred.

(b) EXCEPTION FOR MINORS.—In the case of an alleged injury suffered by a minor who has not attained 6 years of age, no medical malpractice liability claim may be brought after the expiration of the 2-year period that begins on the date the alleged injury that is the subject of the action should reasonably have been discovered, but in no event after the date on which the minor attains 10 years of age.

SEC. 112. REQUIREMENT FOR INITIAL RESOLUTION OF ACTION THROUGH ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—No medical malpractice liability action may be brought in any State court during a cal-

endar year unless the medical malpractice liability claim that is the subject of the action has been initially resolved under an alternative dispute resolution system certified for the year by the Secretary under section 132(a), or, in the case of a State in which such a system is not in effect for the year, under the alternative Federal system established under section 132(b).

(b) INITIAL RESOLUTION OF CLAIMS UNDER ADR.—For purposes of subsection (a), an action is ''initially resolved'' under an alternative dispute resolution system if—

(1) the ADR reaches a decision on whether the defendant is liable to the plaintiff for damages; and

(2) if the ADR determines that the defendant is liable, the ADR reaches a decision on the amount of damages assessed against the defendant.

(c) PROCEDURES FOR FILING ACTIONS.—

(1) NOTICE OF INTENT TO CONTEST DECISION.—Not later than 60 days after a decision is issued with respect to a medical malpractice liability claim under an alternative dispute resolution system, each party affected by the decision shall submit a sealed statement to a court of competent jurisdiction indicating whether or not the party intends to contest the decision.

(2) DEADLINE FOR FILING ACTION.—No medical malpractice liability action may be brought unless the action is filed in a court of competent jurisdiction not later than 90 days after the decision resolving the medical malpractice liability claim that is the subject of the action is issued under the applicable alternative dispute resolution system.

(3) COURT OF COMPETENT JURISDICTION.—For purposes of this subsection, the term ''court of competent jurisdiction'' means—

(A) with respect to actions filed in a State court, the appropriate State trial court; and

(B) with respect to actions filed in a Federal court, the appropriate United States district court.

(d) EFFECT OF ADR DECISION ON BURDEN OF PROOF IN SUBSEQUENT ACTION.—In any medical malpractice liability action, the trier of fact shall uphold the decision made under the previous alternative dispute resolution system with respect to the claim that is the subject of the action unless the party contesting the decision proves by a preponderance of the evidence that the decision was incorrect.

(e) LEGAL EFFECT OF UNCONTESTED ADR DECISION.—The decision reached under an alternative dispute

resolution system shall, for purposes of enforcement by a court of competent jurisdiction, have the same status in the court as the verdict of a medical malpractice liability action adjudicated in a State or Federal trial court. The previous sentence shall not apply to a decision that is contested by a party affected by the decision pursuant to subsection (c)(1).

SEC. 113. ESTABLISHMENT OF PROCESS FOR RESOLUTION OF CLAIMS AGAINST UNITED STATES.

The Attorney General shall establish an alternative dispute resolution process for the resolution of tort claims consisting of medical malpractice liability claims brought against the United States under the Federal Tort Claims Act. Under such process, the resolution of the claim shall occur after the completion of the administrative claim process applicable to the claim under section 2675 of title 28, United States Code.

SEC. 114. MANDATORY PRE-TRIAL SETTLEMENT CONFERENCE.

(a) IN GENERAL.—Before the beginning of the trial phase of any medical malpractice liability action, the parties shall attend a conference called by the court for purposes of determining whether grounds exist upon which the parties may negotiate a settlement for the action.

(b) REQUIRING PARTIES TO SUBMIT SETTLEMENT OFFERS.—At the conference called pursuant to subsection (a), each party to a medical malpractice liability action shall present an offer of settlement for the action.

SEC. 115. CALCULATION AND PAYMENT OF DAMAGES.

(a) LIMITATION ON NONECONOMIC DAMAGES.—The total amount of noneconomic damages that may be awarded to a plaintiff and the members of the plaintiff's family for losses resulting from the injury which is the subject of a medical malpractice liability action may not exceed $250,000, regardless of the number of parties against whom the action is brought or the number of actions brought with respect to the injury.

(b) TREATMENT OF PUNITIVE DAMAGES.—

(1) LIMITATION ON AMOUNT.—The total amount of punitive damages that may be imposed under a medical malpractice liability action may not exceed twice the total of the damages awarded to the plaintiff and the members of the plaintiff's family.

(2) PAYMENTS TO STATE FOR MEDICAL QUALITY ASSURANCE ACTIVITIES.—

(A) IN GENERAL.—Any punitive damages imposed under a medical malpractice liability action shall be paid to the State in which the action is brought.

(B) ACTIVITIES DESCRIBED.—A State shall use amount paid pursuant to subparagraph (A) to carry out activities to assure the safety and quality of health care services provided in the State, including (but not limited to)—

(i) licensing or certifying health care professionals and health care providers in the State;

(ii) operating alternative dispute resolution systems;

(iii) carrying out public education programs relating to medical malpractice and the availability of alternative dispute resolution systems in the State; and

(iv) carrying out programs to reduce malpractice-related costs for retired providers or other providers volunteering to provide services in medically underserved areas.

(C) MAINTENANCE OF EFFORT.—A State shall use any amounts paid pursuant to subparagraph (A) to supplement and not to replace amounts spent by the State for the activities described in subparagraph (B).

(c) PERIODIC PAYMENTS FOR FUTURE LOSSES.—If more than $100,000 in damages for expenses to be incurred in the future is awarded to the plaintiff in a medical malpractice liability action, the defendant shall provide for payment for such damages on a periodic basis determined appropriate by the court (based upon projections of when such expenses are likely to be incurred), unless the court determines that it is not in the plaintiff's best interest to receive payments for such damages on such a periodic basis.

(d) MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.—

(1) IN GENERAL.—The total amount of damages received by a plaintiff in a medical malpractice liability action shall be reduced (in accordance with paragraph (2)) by any other payment that has been or will be made to the individual to compensate the plaintiff for the injury that was the subject of the action, including payment under—

(A) Federal or State disability or sickness programs;

(B) Federal, State, or private health insurance programs;

(C) private disability insurance programs;

(D) employer wage continuation programs; and

(E) any other source of payment intended to compensate the plaintiff for such injury.

(2) AMOUNT OF REDUCTION.—The amount by which an award of damages to a plaintiff shall be reduced under paragraph (1) shall be—

(A) the total amount of any payments (other than such award) that have been made or that will be made to the plaintiff to compensate the plaintiff for the injury that was the subject of the action; minus

(B) the amount paid by the plaintiff (or by the spouse, parent, or legal guardian of the plaintiff) to secure the payments described in subparagraph (A).

SEC. 116. TREATMENT OF ATTORNEY'S FEES AND OTHER COSTS.

(a) LIMITATION ON ATTORNEY'S FEES.—If the plaintiff in a medical malpractice liability action has entered into an agreement with the plaintiff's attorney to pay the attorney's fees on a contingency basis, the attorney's fees for the action may not exceed—

(1) 25 percent of the first $150,000 of any award or settlement paid to the plaintiff; or

(2) 15 percent of any additional amounts paid to the plaintiff.

(b) REQUIRING PARTY CONTESTING ADR RULING TO PAY ATTORNEY'S FEES AND OTHER COSTS.—

(1) IN GENERAL.—The court in a medical malpractice liability action shall require the party that (pursuant to section 112(c)(1)) contested the ruling of the alternative dispute resolution system with respect to the medical malpractice liability claim that is the subject of the action to pay to the opposing party the costs incurred by the opposing party under the action, including attorney's fees, fees paid to expert witnesses, and other litigation expenses (but not including court costs, filing fees, or other expenses paid directly by the party to the court, or any fees or costs associated with the resolution of the claim under the alternative dispute resolution system), but only if—

(A) in the case of an action in which the party that contested the ruling is the plaintiff, the amount of damages awarded to the party under the action does not exceed the amount of damages awarded to the party under the ADR system by at least 10 percent; and

(B) in the case of an action in which the party that contested the ruling is the defendant, the amount of damages assessed against the party under the action is not at least 10 percent less than the amount of damages assessed under the ADR system.

(2) EXCEPTIONS.—Paragraph (1) shall not apply if—

(A) the party contesting the ruling made under the previous alternative dispute resolution system shows that—

(i) the ruling was procured by corruption, fraud, or undue means,

(ii) there was partiality or corruption under the system,

(iii) there was other misconduct under the system that materially prejudiced the party's rights, or

(iv) the ruling was based on an error of law;

(B) the party contesting the ruling made under the previous alternative dispute resolution system presents new evidence before the trier of fact that was not available for presentation under the ADR system;

(C) the medical malpractice liability action raised a novel issue of law; or

(D) the court finds that the application of such paragraph to a party would constitute an undue hardship, and issues an order waiving or modifying the application of such paragraph that specifies the grounds for the court's decision.

SEC. 117. JOINT AND SEVERAL LIABILITY.

The liability of each defendant in a medical malpractice liability action shall be several only and shall not be joint, and each defendant shall be liable only for the amount of damages allocated to the defendant in direct proportion to the defendant's percentage of responsibility (as determined by the trier of fact).

SEC. 118. UNIFORM STANDARD FOR DETERMINING NEGLIGENCE.

Except as provided in subsection (b), a defendant in a medical malpractice liability action may not be found to have acted negligently unless the defendant's conduct at the time of providing the health care services that are the subject of the action was not reasonable.

SEC. 119. APPLICATION OF MEDICAL PRACTICE GUIDELINES IN MALPRACTICE LIABILITY ACTIONS.

(a) USE OF GUIDELINES AS AFFIRMATIVE DEFENSE.—In any medical malpractice liability action, it shall be a complete defense to any allegation that the defendant was negligent that, in the provision of (or the failure to provide) the services that are the subject of the action, the defendant followed the appropriate practice guideline.

(b) RESTRICTION ON GUIDELINES CONSIDERED APPROPRIATE.—

(1) GUIDELINES SANCTIONED BY SECRETARY.—For purposes of subsection (a), a practice guideline may not be considered appropriate with respect to actions brought during a year unless the Secretary has sanctioned the use of the guideline for purposes of an affirmative defense to medical malpractice liability actions brought during the year in accordance with paragraph (2) or (3).

(2) PROCESS FOR SANCTIONING GUIDELINES.—Not less frequently than October 1 of each year (beginning with 1994), the Secretary shall review the practice guidelines and standards developed by the Administrator for Health Care Policy and Research pursuant to section 1142 of the Social Security Act, and shall sanction those guidelines which the Sec-

retary considers appropriate for purposes of an affirmative defense to medical malpractice liability actions brought during the next calendar year as appropriate practice guidelines for purposes of subsection (a).

(3) USE OF STATE GUIDELINES.—Upon the application of a State, the Secretary may sanction practice guidelines selected by the State for purposes of an affirmative defense to medical malpractice liability actions brought in the State as appropriate practice guidelines for purposes of subsection (a) if the guidelines meet such requirements as the Secretary may impose.

(c) PROHIBITING APPLICATION OF FAILURE TO FOLLOW GUIDELINES AS PRIMA FACIE EVIDENCE OF NEGLIGENCE.—No plaintiff in a medical malpractice liability action may be deemed to have presented prima facie evidence that a defendant was negligent solely by showing that the defendant failed to follow the appropriate practice guideline.

SEC. 120. SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IMPOSITION OF HIGHER STANDARD OF PROOF.—

(1) IN GENERAL.—In the case of a medical malpractice liability action relating to services pro-

vided during labor or the delivery of a baby, if the defendant health care professional did not previously treat the plaintiff for the pregnancy, the trier of fact may not find that the defendant committed malpractice and may not assess damages against the defendant unless the malpractice is proven by clear and convincing evidence.

(2) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of paragraph (1), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice whose members previously treated the individual for the pregnancy or is providing services to the individual during labor or the delivery of a baby pursuant to an agreement with another professional.

(b) CLEAR AND CONVINCING EVIDENCE DEFINED.—In subsection (a), the term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, except that such measure or degree of proof is more than that required under preponderance of the evi-

dence, but less than that required for proof beyond a reasonable doubt.

(c) EFFECTIVE DATE.—This section shall apply to claims accruing or actions brought on or after the expiration of the 2-year period that begins on the date of the enactment of this Act.

SEC. 121. PREEMPTION.

(a) IN GENERAL.—This part supersedes any State law only to the extent that State law—

(1) permits the recovery of a greater amount of damages by a plaintiff;

(2) permits the collection of a greater amount of attorneys' fees by a plaintiff's attorney;

(3) establishes a longer period during which a medical malpractice liability claim may be initiated; or

(4) establishes a stricter standard for determining whether a defendant was negligent or for determining the liability of defendants described in section 120(a) in actions described in such section.

(b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in subsection (a) shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

PART 3—REQUIREMENTS FOR ALTERNATIVE DISPUTE RESOLUTION SYSTEMS (ADR)

SEC. 131. BASIC REQUIREMENTS.

(a) IN GENERAL.—A State's alternative dispute resolution system meets the requirements of this section if the system—

(1) applies to all medical malpractice liability claims under the jurisdiction of the State courts;

(2) requires that a written opinion resolving the dispute be issued not later than 6 months after the

date by which each party against whom the claim is filed has received notice of the claim (other than in exceptional cases for which a longer period is required for the issuance of such an opinion), and that the opinion contain—

(A) findings of fact relating to the dispute, and

(B) a description of the costs incurred in resolving the dispute under the system (including any fees paid to the individuals hearing and resolving the claim), together with an appropriate assessment of the costs against any of the parties;

(3) requires individuals who hear and resolve claims under the system to meet such qualifications as the State may require (in accordance with regulations of the Secretary);

(4) is approved by the State or by local governments in the State;

(5) with respect to a State system that consists of multiple dispute resolution procedures—

(A) permits the parties to a dispute to select the procedure to be used for the resolution of the dispute under the system, and

(B) if the parties do not agree on the procedure to be used for the resolution of the dispute, assigns a particular procedure to the parties;

(6) provides for the transmittal to the State agency responsible for monitoring or disciplining health care professionals and health care providers of any findings made under the system that such a professional or provider committed malpractice, unless, during the 90-day period beginning on the date the system resolves the claim against the professional or provider, the professional or provider brings a medical malpractice liability action contesting the decision made under the system; and

(7) provides for the regular transmittal to the Administrator for Health Care Policy and Research of information on disputes resolved under the system, in a manner that assures that the identity of the parties to a dispute shall not be revealed.

(b) APPLICATION OF MALPRACTICE LIABILITY STANDARDS TO ALTERNATIVE DISPUTE RESOLUTION.—The provisions of part 2 shall apply with respect to claims brought under a State alternative dispute resolution system or the alternative Federal system in the same manner

as such provisions apply with respect to medical malpractice liability actions brought in the State.

SEC. 132. CERTIFICATION OF STATE SYSTEMS; APPLICABILITY OF ALTERNATIVE FEDERAL SYSTEM.

(a) CERTIFICATION.—

(1) IN GENERAL.—Not later than October 1 of each year (beginning with 1994), the Secretary, in consultation with the Attorney General, shall determine whether a State's alternative dispute resolution system meets the requirements of this part for the following calendar year.

(2) BASIS FOR CERTIFICATION.—The Secretary shall certify a State's alternative dispute resolution system under this subsection for a calendar year if the Secretary determines under paragraph (1) that the system meets the requirements of section 131.

(b) APPLICABILITY OF ALTERNATIVE FEDERAL SYSTEM.—

(1) ESTABLISHMENT AND APPLICABILITY.—Not later than October 1, 1994, the Secretary, in consultation with the Attorney General, shall establish by rule an alternative Federal ADR system for the resolution of medical malpractice liability claims during a calendar year in States that do not have

in effect an alternative dispute resolution system certified under subsection (a) for the year.

(2) REQUIREMENTS FOR SYSTEM.—Under the alternative Federal ADR system established under paragraph (1)—

(A) paragraphs (1), (2), (6), and (7) of section 131(a) shall apply to claims brought under the system;

(B) claims brought under the system shall be heard and resolved by arbitrators appointed by the Secretary in consultation with the Attorney General; and

(C) with respect to a State in which the system is in effect, the Secretary may (at the State's request) modify the system to take into account the existence of dispute resolution procedures in the State that affect the resolution of medical malpractice liability claims.

SEC. 133. REPORTS ON IMPLEMENTATION AND EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS.

(a) IN GENERAL.—Not later than 5 years after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report describing and evaluating State alternative dispute resolution systems oper-

ated pursuant to this part and the alternative Federal system established under section 132(b).

(b) CONTENTS OF REPORT.—The Secretary shall include in the report prepared and submitted under subsection (a)—

(1) information on—

(A) the effect of such systems on the cost of health care within each State,

(B) the impact of such systems on the access of individuals to health care within the State, and

(C) the effect of such systems on the quality of health care provided within the State; and

(2) to the extent that such report does not provide information on no-fault systems operated by States as alternative dispute resolution systems pursuant to this part, an analysis of the feasibility and desirability of establishing a system under which medical malpractice liability claims shall be resolved on a no-fault basis.

PART 4—OTHER REQUIREMENTS AND PROGRAMS

SEC. 141. FACILITATING DEVELOPMENT AND USE OF MEDICAL PRACTICE GUIDELINES.

(a) INCREASE IN AUTHORIZATION OF APPROPRIATIONS.—Section 1142(i)(1) of the Social Security Act (42

U.S.C. 1320b–12(i)(1)) is amended by striking ''and'' at the end of subparagraph (D) and by striking subparagraph (E) and inserting the following:

''(E) $195,000,000 for fiscal year 1994 (of which $10,000,000 shall be used for sanctioning practice guidelines for purposes of an affirmative defense in medical malpractice liability actions); and

''(F) $20,000,000 for each of fiscal year 1995 and 1996, to be used for sanctioning practice guidelines for purposes of an affirmative defense in medical malpractice liability actions.''.

(b) CONSIDERATION OF MALPRACTICE LIABILITY DATA IN DEVELOPING AND UPDATING GUIDELINES.—Section 1142(c)(5) of such Act (42 U.S.C. 1320b–12(c)(5)) is amended by striking ''claims data'' and all that follows through ''patients'' and inserting the following: ''claims data, data on clinical and functional status of patients, and data on medical malpractice liability actions''.

(c) DEVELOPMENT OF REPORTING FORMS FOR STATE ADR SYSTEMS.—The Secretary, in consulation with the Administrator for Health Care Policy and Research, shall develop a standard reporting form to be used

by State alternative dispute resolution systems in transmitting information to the Administrator pursuant to section 131(a)(6) on disputes resolved under such systems.

(d) STUDY OF EFFECT OF GUIDELINES ON MEDICAL MALPRACTICE.—

(1) STUDY.—The Secretary shall conduct a study of the effect of the use of the medical practice guidelines developed by the Administrator for Health Care Policy and Research on the incidence of and the costs associated with medical malpractice.

(2) REPORTS.—(A) Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit an interim report to Congress describing the availability and use of medical practice guidelines and the aggregate costs associated with medical malpractice.

(B) Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), together with recommendations regarding expanding the use of medical practice guidelines for determining the liability of health care professionals and health care providers for medical malpractice.

SEC. 142. PERMITTING STATE PROFESSIONAL SOCIETIES TO PARTICIPATE IN DISCIPLINARY ACTIVITIES.

(a) ROLE OF PROFESSIONAL SOCIETIES.—Notwithstanding any other provision of State or Federal law, a State agency responsible for the conduct of disciplinary actions for a type of health care practitioner may enter into agreements with State or county professional societies of such type of health care practitioner to permit such societies to participate in the licensing of such health care practitioner, and to review any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of any such health care practitioner. Any such agreement shall comply with subsection (b).

(b) REQUIREMENTS OF AGREEMENTS.—Any agreement entered into under subsection (a) for licensing activities or the review of any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of a health care practitioner shall provide that—

(1) the health care professional society conducts such activities or review as expeditiously as possible;

(2) after the completion of such review, such society shall report its findings to the State agency with which it entered into such agreement;

(3) the conduct of such activities or review and the reporting of such findings be conducted in a manner which assures the preservation of confidentiality of health care information and of the review process; and

(4) no individual affiliated with such society is liable for any damages or injury directly caused by the individual's actions in conducting such activities or review.

(c) AGREEMENTS NOT MANDATORY.—Nothing in this section may be construed to require a State to enter into agreements with societies described in subsection (a) to conduct the activities described in such subsection.

(d) EFFECTIVE DATE.—This section shall take effect 2 years after the date of the enactment of this Act.

SEC. 143. REQUIREMENTS FOR RISK MANAGEMENT PROGRAMS.

(a) REQUIREMENTS FOR PROVIDERS.—Each State shall require each health care professional and health care provider providing services in the State to participate in a risk management program to prevent and provide early warning of practices which may result in injuries to patients or which otherwise may endanger patient safety.

(b) REQUIREMENTS FOR INSURERS.—Each State shall require each entity which provides health care profes-

sional or provider liability insurance to health care professionals and health care providers in the State to—

(1) establish risk management programs based on data available to such entity or sanction programs of risk management for health care professionals and health care providers provided by other entities; and

(2) require each such professional or provider, as a condition of maintaining insurance, to participate in one program described in paragraph (1) at least once in each 3-year period.

(c) EFFECTIVE DATE.—This section shall take effect 2 years after the date of the enactment of this Act.

SEC. 144. GRANTS FOR MEDICAL SAFETY PROMOTION.

(a) RESEARCH ON MEDICAL INJURY PREVENTION AND COMPENSATION.—

(1) IN GENERAL.—The Secretary shall make grants for the conduct of basic research in the prevention of and compensation for injuries resulting from health care professional or health care provider malpractice, and research of the outcomes of health care procedures.

(2) PREFERENCE FOR RESEARCH ON CERTAIN ACTIVITIES.—In making grants under paragraph (1), the Secretary shall give preference to applica-

tions for grants to conduct research on the behavior of health care providers and health care professionals in carrying out their professional duties and of other participants in systems for compensating individuals injured by medical malpractice, the effects of financial and other incentives on such behavior, the determinants of compensation system outcomes, and the costs and benefits of alternative compensation policy options.

(3) APPLICATION.—The Secretary may not make a grant under paragraph (1) unless an applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary may require.

(b) GRANTS FOR LICENSING AND DISCIPLINARY ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall make grants to States to assist States in improving the States' ability to license and discipline health care professionals.

(2) USES FOR GRANTS.—A State may use a grant awarded under subsection (a) to develop and implement improved mechanisms for monitoring the practices of health care professionals or for conducting disciplinary activities.

(3) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States receiving grants under paragraph (1) to assist them in evaluating their medical practice acts and procedures and to encourage the use of efficient and effective early warning systems and other mechanisms for detecting practices which endanger patient safety and for disciplining health care professionals.

(4) APPLICATIONS.—The Secretary may not make a grant under paragraph (1) unless the applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary shall require.

(c) GRANTS FOR PUBLIC EDUCATION PROGRAMS.—

(1) IN GENERAL.—The Secretary shall make grants to States and to local governments, private nonprofit organizations, and health professional schools (as defined in paragraph (3)) for—

(A) educating the general public about the appropriate use of health care and realistic expectations of medical intervention;

(B) educating the public about the resources and role of health care professional licensing and disciplinary boards in investigating

claims of incompetence or health care malpractice; and

(C) developing programs of faculty training and curricula for educating health care professionals in quality assurance, risk management, and medical injury prevention.

(2) APPLICATIONS.—The Secretary may not make a grant under paragraph (1) unless the applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary shall require.

(3) HEALTH PROFESSIONAL SCHOOL DEFINED.—In paragraph (1), the term ''health professional school'' means a school of nursing (as defined in section 853(2) of the Public Health Service Act) or an institution described in section 701(4) of such Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not more than $15,000,000 for each of the first 5 fiscal years beginning on or after the date of the enactment of this Act for grants under this section.

SEC. 145. STUDY OF BARRIERS TO VOLUNTARY SERVICE BY PHYSICIANS.

(a) STUDY.—The Secretary shall conduct a study to determine the factors preventing or discouraging physicians (whether practicing or retired) from volunteering to provide health care services in medically underserved areas.

(b) REPORTS.—(1) Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit an interim report to Congress on the study conducted under subsection (a), together with the Secretary's recommendations for actions to increase the number of physicians volunteering to proivde health care services in medically underserved areas.

(2) Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit a final report to Congress on the study conducted under subsection (a) (taking into account the effects of this subtitle on the incidence and costs of medical malpractice), together with the Secretary's recommendations for actions to increase the number of physicians volunteering to provide health care services in medically underserved areas.

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